

FILED

FEB 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAFAEL PEREZ-DIAZ, aka Rafael Diaz-
Perez, aka Antonio Castillo,

Defendant - Appellant.

No. 04-10633

D.C. No. CR-04-00123-RCJ

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Robert C. Jones, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER and BYBEE, Circuit Judges.

Rafael Perez-Diaz appeals from the 48-month sentence imposed following his guilty plea conviction to unlawful reentry of a deported alien, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Perez-Diaz contends that the district court committed plain error in applying a 16-level enhancement for a prior crime of violence without “documentation or judicially noticeable facts that clearly establish that the conviction is a predicate conviction for enhancement purposes.” *United States v. Corona-Sanchez*, 291 F.3d 1201, 1203 (9th Cir. 2002) (en banc) (internal quotations omitted). We agree. The district court plainly erred in relying solely on the description in the pre-sentencing report. *United States v. Pimentel-Flores*, 339 F.3d 959, 968 (9th Cir. 2003).

Accordingly, we vacate the sentence and remand for the district court to determine whether Perez-Diaz’s prior conviction is a crime of violence within the meaning of U.S.S.G. § 2L1.2(b)(1)(A)(ii).

VACATED and REMANDED.